GOVERNOR'S MESSAGE.

STATE OF ILLINOIS, EXECUTIVE DEPARTMENT,
SPRINGFIELD, *January* 8, 1873.

To the Senate and House of Representatives:

By the Constitution, it is made the duty of the Governor, at the commencement of each session and at the close of his term of office, to give to the General Assembly information, by message, of the condition of the State, and also to recommend such measures as he shall deem expedient.

It is an easy and pleasant task for a retiring Governor of the State of Illinois to invite the attention of the General Assembly to the evidences of development and progress that mark the condition of the State.

The cities and towns that adorn the shores of the rivers and lakes and dot the prairies are increasing in population and wealth, railroads are in process of construction that will, when completed, connect the remotest and most isolated districts with the centres of commerce. The manufacturing interests have been extended and increased, the farms and orchards and vineyards were during the past year productive, and the means for the supply of the actual wants of the population are more than usually abundant. In all the material elements essential to its future growth and prosperity, the State of Illinois has nothing more to desire.

Nor can it be asserted that the people of the State have been unmindful of their social duties, for public provision for the education of all the children of the State is already made, and will hereafter keep pace with the advancing public wants, while institutions intended for the purposes of advanced education and higher culture are increasing in numbers, and are widening their fields of usefulness; and although our general system for the care of the poor and permanently helpless classes is not complete, nor yet entirely satisfactory in its methods or results, the people of the State have cheerfully submitted to all taxes imposed upon them for that class of objects, and have gone beyond their representatives in demanding that nothing required by the most enlightened humanity for the relief or maintenance of the objects of public charity shall be left undone.

It is with the most profound satisfaction that I am able to say, that notwithstanding my extensive intercourse with the people of the State

during my official term, I have never heard from any person a murmur against any tax actually levied or proposed for the benefit of the afflicted or helpless; and the representatives of the people in the General Assembly, true to the spirit of their constituents, have been always willing to appropriate as much money for the same objects as they could be satisfied would be wisely expended. And with qualifications and exceptions to which I will hereafter again refer, the criminal and penal laws are enforced, and peace and order prevails throughout the State.

In my message to the General Assembly of January 4, 1871, I had occasion to specify a number of instances of violence by mobs, and I regret to be compelled to say, that since that time other, though fewer, outrages, of a similar character, have occurred at different points in the State. In some of the cases that have been reported to me, the acts of the mob were done openly and publicly, and in one case, a band of armed and disguised men assassinated a peaceful citizen at his home. In each of the cases reported to me I offered a reward of one thousand dollars for the apprehension and conviction of the guilty parties.

Perhaps we are not permitted to hope that the State will hereafter be entirely exempted from outbursts of popular passion that will override reason, and justice, and law; nor can it be expected that designing or malignant men will not be found who will be able to avail themselves of some pretext for organizing and directing the passions of mobs, or who will seize upon occasions of passing frenzy of the public mind and precipitate the commission of crimes; but from evidences afforded me, I am persuaded that the people of all parts of the State are impressed with the conviction, supported by the experience of some localities, that mobs demoralize and deprave the public conscience and promote the commission of crimes. We may therefore hope that examples of mob outrages will be hereafter rare in the history of the State.

From the language of the newspaper press and the reported expressions of citizens in public meetings, the people of the State have been led to apprehend that crime and disorder has increased in the city of Chicago and other large cities of the State. After having given much attention to the facts of the more aggravated offenses reported to have been perpetrated in Chicago, as well as to the general condition of the city, I am satisfied that many of the reports that have influenced the public belief are exaggerated, and that considering the extraordinary circumstance of the almost total destruction of the city within little more than a year past, and the great influx of population from every quarter, the laws are enforced and order is as well maintained in Chicago as in other great cities of the country. It is true that some startling examples of fraud in commercial circles have occurred in Chicago that are in their influence more disastrous to the morals, the business and the character of the people of the State, than is the aggregate effect

of many minor offenses, and the parties implicated in them are still unpunished. And much opposition has been made to the enforcement of the laws relating to the sale of intoxicating liquors, and to keeping open public drinking establishments on the Sabbath, but the commercial frauds referred to seem to be but characteristic of the period, and the controversies in respect to the liquor and Sunday laws can produce no mischief while confined to the use of legal means for the maintenance of real or supposed rights, or for influencing public opinion.

The extensive acceptance of the belief that crimes, especially those of a homicidal character, have increased in frequency, has led to the suggestion of many changes in the law, with a view to a remedy.

The changes most frequently insisted upon may be stated to be: 1st. The abolition of the grand jury system, and the substitution for an indictment of an accusation to be preferred by the law officers of the State. 2d. To take from parties charged with crimes the right to a change of venue. 3d. To disallow challenges to persons upon the ground of an opinion formed upon information obtained from printed publications, or, as some propose, without regard to the source from whence the information is acquired, if the proposed juror will swear that, notwithstanding any opinion he may entertain, he can try the case impartially. 4th. To establish additional restrictions upon the right of accused persons to demand continuances. 5th. To make death the penalty for murder; and, 6th. Abolish or greatly restrict the executive authority to grant pardons, and wholly take from that department the power to commute the death penalty to imprisonment for the life of the person convicted, or for any other term.

To those who have such confidence in mere legislation, that they assume that every abuse may be corrected and every evil repressed by laws, and to that other class, ignorant of the origin, history and reason of the institutions and rules and methods of procedure proposed to be abrogated or changed, and who welcome every change in the existing laws as an improvement, all the alterations proposed will be acceptable; but others will remember that the grand jury, one of the "institutions" of our free spirited fathers, and most of the formal and carefully guarded rules of criminal procedure that are now the subject of complaint, were devised to protect the lives and liberties of the people against the aggressions and encroachments of power, and others, like that of confiding the measure of punishment upon convictions for murder to the jury, are the results of the observations of men of the most profound knowledge and the largest experience in the administration of criminal laws. They are parts of a judicious and well settled system, not perfect, but that combines greater advantages for the prompt administration of justice, with the proper guards for the safety of the rights of the citizen, than any that exists in any country or under any form of government.

In view of the necessity that has always been admitted to exist for careful regulations for the protection of individuals, it is painful to witness the mistaken zeal that prompts a portion of the public press and influential public bodies to urge fundamental changes, simply that citizens may be made more defenceless when pursued by the authorities of the law upon accusations of crime. Every change in the criminal laws that deprives parties accused of a means for obtaining an impartial trial, or that proposes to substitute the discretion of a judge or of a State's attorney for fixed and well defined rules of law or settled modes of procedure, is a sacrifice of the safety of the citizen. Happily, except on occasions when the public mind is excited by appeals to popular fears or prejudices, the passions of the American people are not cruel; but who is prepared to say, that when a citizen may be put upon his trial upon a charge that involves his life, in the midst of a community filled with prejudice against him, without the power to demand of right the removal of his trial to an impartial vicinage, with no right of continuance to await a better state of public sentiment or to obtain evidence, no challenge to his triers upon the ground of opinions formed against him, death the inevitable consequence of conviction, and the Governor without power, even upon the clearest facts, to arrest the bloody sentence, the vindictive prejudices of some community may not demand a victim, and that then a State's attorney may not be found who will consent to accuse, and the judge, upon whose discretion the rights of the citizen depends, yield to public clamor and consent to the sacrifice?

The "institution" of grand and petit juries is an essential part of the judicial system of a free State. Theorists who can demonstrate that the rule of a single wise man is better than that of the multitude, and law reformers who would substitute the discretion of a State's attorney or a judge for the deliberations of a grand jury or fixed rules of procedure, alike forget that no method of election has been yet devised that will insure the choice of the wisest for rulers or State's attorneys or judges, nor do they attach enough importance to the fact, that in a republic no system of laws can be devised that will, without endangering the public liberties, be effective for the prevention and punishment of crimes, unless the laws themselves provide for the participation of the people in their administration, and that neither public nor private rights can be secure when they are in any important sense subject to the discretion of any ruler or magistrate.

It seems to me, then, that, while the attention of the General Assembly should be directed to the present state of the criminal laws, and the rules of criminal procedure, with a view to their improvement, nothing should be done to enlarge the discretion of the courts in criminal cases, nor delude the people with the belief that any change that can be made will relieve them from the necessity of giving their own attention to the proper execution of the laws.

It is at once the vice and weakness of wealthy and prosperous communities, that a majority of those who should be the most capable and useful citizens, from purely selfish reasons, prefer to delegate the discharge of their most important public duties to others, and experience has demonstrated that whether the mercenaries who undertake the protection of the public interests, or who are by the indifference of the people allowed to seize control of public affairs, are the hired soldiers of a standing army or the traders in offices, who cajole, neglect and plunder the people, or those who make jury duty a trade, the result is the same: the degradation of the laws, contempt for public justice, and in the end all the securities for the safety of life, liberty and property are destroyed.

I do not feel at liberty to consume much space in the discussion of the change in the law, insisted upon by many, to take from the jury on trials for murder the right to determine whether the party found guilty shall suffer death or be punished by confinement in the Penitentiary for any term exceeding fourteen years, and that may extend to the whole of his life, and make the judgment of death the absolute legal consequence of a conviction for murder.

I have no doubt of the right of the State to put persons to death, who by their own deliberate criminal acts make that course necessary for the public safety, nor do I question the existence of the right to inflict the death penalty as a punishment for crime; but I am quite as decided in the conviction that that mode of punishment has but little influence to deter from the commission of crime, and that on the other hand it is a worn out vestige of barbarism, that hardens and depraves the people.

Deliberate homicide by public authority has much greater influence to weaken respect for human life than the commission of murder by lawless persons, and it is remarkable that the ecclesiastical bodies, and that portion of the so-called religious and the secular press that demand the more frequent infliction of death by judicial sentence, concede the whole point in dispute, when, impressed with the horrible and depraving influence of public executions, they insist upon the necessity of excluding those from the spectacle who are to be instructed and impressed by the example. It may be true that there are classes of persons who can only be restrained from the commission of crimes by the fear of death. There may be communities in which the example of the infliction of the death penalty would be productive of benefit, and it may also be true that monsters of crime may sometimes be found whose extermination is demanded, not to vindicate the authority of law, but the dignity of human nature. It would not therefore be judicious for the State to renounce the power to inflict death, but the propriety of the exercise of the power in any instance can best be determined by a jury drawn from the body of the people. And it may be proper for me to make some allusion to the probable influence of the exercise of the pardoning power by the Governor upon the administration of the criminal laws.

The executive authority to grant pardons, reprieves and commutations, is, under the Constitution, absolute, and to be exercised by him at his discretion, and like all discretionary powers confided to public officers, is extremely liable to abuse.

I have exercised the pardoning power, in proportion to the whole number of convictions in the State, more sparingly than any of my predecessors, and I am satisfied that I have done so in improper cases. But I have had the satisfaction of releasing persons from the Penitentiary after they had furnished to me the most unquestionable proof of their innocence of the alleged crimes of which the jury had found them guilty, I have, by pardon, shortened terms of imprisonment that were certified to me by the judges and juries imposing them to be excessive, and I have in more than one instance interfered for the relief of the poor and ignorant who were the victims of the arts of designing persons.

We know that the blindness of legal justice is but a fable, and that though the laws, in their letter and spirit, are just and humane, and equal, as a practical fact the wealthy and influential do disregard or violate them with a measure of impunity not permitted to the poor and friendless. We know, too, that the jails into which those who are accused of the commission of crimes and are unable to furnish bail are crowded—are moral pest houses—where vice is taught to the innocent, and the guilty made more depraved. We know that instances are not wanting in which jailers or their subordinates, alone or in conjunction with some of a class of professional men who dishonor the law and disgrace the courts that tolerate their presence, have deprived friendless prisoners of all they possess, and have then delivered them over to a certain conviction, their sentences of imprisonment aggravated and lengthened by the vile character of their counsel, who first robbed and then betrayed them. I have pardoned some of this class of unfortunates upon the ground that if the State cannot protect them it ought to make them the reparation of forgiveness.

No subject is more worthy of the attention of the representatives of an enlightened Christian people than the imperfect provision made by the laws of the State for the protection of the rights of the poor, the ignorant, the inexperienced and the friendless, in the criminal courts. The evil is most apparent in the cities and populous counties of the State. Every year the population of the State is increased by emigrants from all the nations of Europe, and from every State of the Union, who are of every grade of character and every degree of intelligence. Of the thousands that come into the State, many are ignorant of our language and our laws, and many are upon their arrival poor and often ill, dispirited and inexperienced. In the cities the missionaries of vice are ever active, and its temples are always open, and from their doors none are driven away; to these the inexperienced and unwary are often

tempted to resort, or from want of employment the irresolute are impelled to the commission of crime, or often they are made the dupes and instruments of those with whom crime is a trade, or, being strangers and friendless, they are readily suspected, and when arrested they are unable to find bail and are committed to jail, and if indicted, the judge, however humane and considerate, is compelled to entrust their defence to some lawyer without standing or experience in his profession, and a conviction follows, for there is no one to demand justice or implore mercy. It is time that the practice of delivering the living bodies of poor prisoners to legal students for professional instruction was abandoned, and I insist that provision should be made by law for the election or appointment, in the large cities and populous counties of the State, of suitable persons whose duty it should be to visit the places where persons are confined upon criminal charges, confer with and advise poor prisoners, protect them from oppressions and extortions, attend examinations, investigate the charges against them, advise with injured parties, and the court and State's attorney, with a view to the dismissal of prosecutions where the ends of justice would by that course be promoted, or with reference to the proper measure of punishment in cases where the punishment is discretionary with the judge, or in proper cases alone, or in conjunction with the counsel assigned by the court, manage their defense. A proposition to provide for the appointment of an officer to watch the administration of the laws from the standpoint of those who are accused of crimes is novel, but every one familiar with the administration of the criminal laws of the State, is fully aware of the fact that a truthful statement of all the wrongs inflicted upon persons charged with offences would prove that many crimes have been committed in the name of the law.

RAILROADS.

An important exception to the general disposition to obey the laws, which prevails throughout the State, is found in the refusal of common carriers of passengers and freights by railways to obey the constitutional and legal enactments provided for the regulation of that important interest, and the people of the State, aware of the refusal of this class of persons to obey the laws, and of the mischiefs their contempt of the authority of the State produces, look to the General Assembly to make further and efficient efforts to provide a remedy.

The report of the Railroad and Warehouse Commissioners, which is now in the hands of the printer, and will be laid before the General Assembly as early as possible, will contain full information as to the pretensions of the railway managers, and of the efforts made by the Commissioners to enforce the authority of the State over them.

Successful resistance to the Constitution and laws of the State subverts them. It can make no difference whether such resistance is made

by physical means too powerful to be overcome, or by combinations of financial interests that merely treat the laws with contempt, and refuse to obey them. The effects of successful physical resistance are immediate and easily perceived, while those produced by persistent and contemptuous disobedience are remote and may not at once appear, but they silently sap and weaken the foundations of public order, and in the end destroy.

The issue made with the State, by the distinct refusal of the managers of railways to obey the laws enacted by the General Assembly for the correction of abuses, and to prevent unjust discriminations and extortions, is one of power. It is not pretended that in the enactment of the laws disobeyed the General Assembly transcended the authority vested in the Legislature; for by the terms of the Constitution it is made the duty of the General Assembly, from time to time, to pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freights on the different railroads of the State, and to pass laws to correct abuses and to prevent unjust discriminations and extortions in the rates of freight and passenger tariffs on the different railroads of the State; and by another provision of the Constitution, railroads heretofore constructed, or that may hereafter be constructed in this State, are declared to be public highways, and free to all persons for the transportation of their persons and property thereon, as may be prescribed by law.

In opposition to these distinct provisions of the State Constitution, and the laws enacted in pursuance of them, the railroad corporations deny their obligation to obey, and openly persist in refusing to conform to the maximum rates allowed by the acts of the General Assembly, for the transportation of passengers and freights on their lines; and they continue to practice the abuses and enforce the unjust discriminations and extortions forbidden by the laws; and they continue, notwithstanding the legislative prohibition, to assert their right to fix their ratio for the transportation of passengers and freights on their roads, and to establish discriminations at their pleasure; and they deny the authority of the State to interfere for the regulation of the one or the prohibition of the other.

It is perhaps but just that it should be stated that it is sometimes conceded by those who manage the interests of the railway corporations that as carriers they are in some way, or to some extent, bound to conform to the principle of reasonableness in their charges; and on some occasions some of them are understood to have assented to the proposition, which seemed to be correct under the Constitution of 1848, that reasonableness is the limit of railroad rates for transportation, and the question of what are reasonable rates is to be settled by the courts when particular charges are disputed.

But the General Assembly, by the act of April 7, 1871, which was enacted to prevent unjust discriminations and extortions in the rates to be charged for the transportations of freights, fixed certain rules for the determination of the rates permitted to be charged by the railways in this State, declared all rules and regulations and by-laws of any railroad corporation that fixed, prescribed or established any greater toll or compensation than the rates permitted by the act, to be void, provided penalties for the violation of the provisions of the act, and then declared any willful violation of any of the acts to be a forfeiture of its franchises, and by the act of April 15, 1871, the maximum rates allowed to be charged by railways for the transportation of passengers was fixed, and provision made for the enforcement of the act.

Repeating expressions employed before, it seems to me to be due to the interests of the people of the State, and to the dignity and authority of its Constitution and laws, that the most energetic and decisive measures should be devised and adopted by the General Asembly, to limit the pretensions of this rapidly growing and all absorbing interest and to compel its obedience. In this view it is essential that all the offences committed by the railway corporations should be prosecuted by indictment preferred by the grand juries, and tried by juries of the proper vicinage. One of the acts now in force, provides that State's attorneys *may* prosecute; the other that he shall prosecute for forfeitures after the almost impossible event of the fifth conviction; but State's attorneys will not be likely to desire to encounter this formidable interests with no other support than the consciousness of having discharged duties. I therefore recommend that the fourth section of the act of April 7th, 1871, be amended so as to make the penalties provided by that section recoverable by indictment against the corporations and its employes, and that the fifth section be amended so as to make it the duty of the Attorney General to prosecute railway companies for violations of the law, and that similar alterations be made in the act of April 15th, 1871.

But it seems to me that the real causes of the manifold abuses, extortions and oppressions to which the people are subjected are to be found in the fact that railroad property has passed under the control of combinations of financial adventurers who are in nowise interested in the proper management of the roads.

This condition of the management of railroads may be accounted for by referring it in part to the great increase of the speculative wealth of the country; the tendency everywhere, in every business, to organization; and the circumstance, so unfortunate for the people, that the General Assembly did not, in the enactment of the special and general laws authorizing the creation of railroad corporations, expressly reserve such sufficient power to regulate and control their internal management as would insure the protection of the interests of the body of the stockholders and the public.

The enormous system of internal improvements undertaken by the State in its early history, proves that the people even then perceived the usefulness of railways, and their willingness to make large sacrifices to secure to themselves their advantages; and since the failure of that system, no State has made greater efforts, by liberal acts of incorporation to private adventures, grants of the right of way for railroads previously acquired by the State, gratuities in money and lands, and loans of credit by counties and other public and municipal bodies, to secure the construction of railroads, than has Illinois, and the citizens of the State have, with the most liberal spirit and by every means in their power, aided in the development of the railway system to its present proportions.

The State of Illinois contains within its limits more than six thousand miles of railroad; they penetrate almost every county. And the railroads of this State, by their legal connections, and the identity of their interests and purposes with those of other States, have become a part of a system that it is said embraces sixty thousand miles of railroads in the United States, and which is being extended to limits that do not admit of easy definition.

The railroad and carrying interests control a larger amount of capital than any other in the United States, and by means of their capital, and their intimate relations with all other business pursuits, extending too, as railroads do, to all parts of the country, they exercise a greater measure of influence than was ever before, in any country, in the hands of individuals. The iron rail, the steam engine and the telegraph, all now in substantial co-operation, already control the commerce of the continent, and to a large extent influence the value of every product of industry and the profits of every business pursuit. They build up favored cities, and depress their rivals; they have diminished the value of the great rivers as highways of commerce; and the shipping of the lakes, and that engaged in coastwise trade, embarrassed by obstacles that the engine upon the iron rail defies, maintain with the new agencies but a feeble and struggling competition. From the superiority of this new method of transportation in speed, in safety and power, all other modes are rendered comparatively useless, and the country is brought to face the fact that in this age of remarkable commercial and intellectual activity the only available lines of intercourse and trade on the continent are under the control of private individuals, who assert for themselves the power and the right to impose burdens upon the intercourse and commerce of the country to an extent to which they acknowledge no definite limits, nor in the exercise of the discretion they claim as to the amounts they may impose, do they admit themselves to be bound to conform to any rule of equality, but they maintain their right to discriminate between different points on their own lines be-

tween different individuals engaged in the same business at the same points, and to increase and reduce their rates at pleasure, until to the ordinary hazards of business is added the uncertain fluctuations dependent upon the management of railways.

In my judgment the existing laws, intended to regulate the duties and define the obligations of common carriers by railway, will not accomplish the object desired, for the reason, amongst others, that they are to a certain extent based upon the wide spread misconception of the true relation of that class of public agents to the people, and, as a consequence of that misconception, the regulations for the government of the owners and managers of railway lines are confused and weakened by assuming that the ownership and management of railway, lines and the receipt, transportation and delivery of passengers and freights for hire, which constitutes the business of a common carrier, are so inseparable that they are necessarily parts of the same general business, while, in the nature of things, and from the force of practices that now extensively prevail on many lines of railway, they are essentialy different pursuits; and regulations intended for the government of the one, have no fitness or proper application to the other.

All the railroads now in operation in the State were constructed under the authority of laws that conferred upon the corporators that undertook them the power to acquire the lands needed for the use of their road by consent of the owners, or to take lands as for public uses upon making compensation, and the power to construct and maintain a railway with the proper appurtenances, and to acquire and hold the suitable necessary machinery to operate them, and then to engage in the business of common carriers on their own lines; and it is to the fact that railway corporations exercise the power conferred upon them to carry on the business of common carriers, and by their own arbitrary authority fix the rates they will demand for services rendered exclusively by them on their own lines, or, by combinations with other corporations that claim similar powers, fix the rates between the more important and distant points, that we owe the interest that the people feel in their management. Every one interested in the subject of the cost of the transportation of the products of the country to a market, realizes, in the result of the exercise of these powers by railway carriers, all the evils that are produced by the existence of a monopoly, and many methods have been proposed for affording relief; but without now discussing any of them I am satisfied that the only means that will afford the country the relief demanded is to invite and encourage competition on all the railroads in the State, between the carriers that own or control them, and others who upon just compensation to be made for the use of the roads and their appurtenances, and for the fixed facilities needed, may choose to engage in the business. If the monopoly of the business on any of the important lines of railroad was

taken from the corporation that owns the road, the effect would soon be perceived in the increased facilities for transportation and cheaper rates. It is because competition is not now possible that railroad managers discriminate between localities and individuals, but if the legal right of others to engage in business on the railroads of the State was once established by law, the mere existence of the right would constantly and favorably influence their conduct, though the right of competition secured to individuals by the law might never be exercised.

It was with a view to break up the monopoly of the use of their own railroad lines by common carriers, and, if possible, to separate the ownership of railroad property from the prosecution of that business, that the Constitutional Convention adopted the 10th, the 12th and the 14th sections of the 11th article of the Constitution. Before the adoption of the Constitution of 1870, the public mind had become so affected with the impression that railways could only be useful to the public as long as the corporations controlling them were able themselves to carry on business as common carriers, that a disposition was sometimes apparent to consider the rolling stock and other movable property of railroad corporations as appurtenant to the railroads. To correct that impression, and to prevent its further growth, the 10th section of the 11th article of the Constitution was adopted, which declares "that the rolling stock and other movable property belonging to any railroad company in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the General Assembly shall pass no law exempting any such property from execution and sale." And then, to lay the foundation for the assertion of the public right to authorize competition in the business of carriers on the roads of the State, and to furnish the basis for a proper definition of the right of the owners of railroad property, as against the public right to its use, by the 12th section of that article it is declared "that railways heretofore constructed, or that may hereafter be constructed in this State, are public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulation as may be prescribed by law." And the 14th section recognizes the right of the State to take the property of corporations for public use to the same extent as the property of individuals may be taken.

These constitutional provisions are intended to establish that there is no necessary connection between the ownership of railroads and the prosecution of the business of common carriers by the same persons or corporations; that railroads are public highways, in which the public have rights, the most important of which is to use them for the transportation of their persons and property, subject only to regulations to be provided by law; that the property of railroad corporations may

be taken by the State for public uses to give effect to its own policy; and the proper conclusion from these sections and from the whole scope of that portion of the Constitution which refers to railroads, is, that the policy intended to be supported is to break up the monopoly of the carrying business, which the owners and managers of railroads have secured, and make the lines of railroads free to commerce, subject only to the rights of the corporations and individuals to whom they belong to demand compensation for their use, and then only to the extent to which they may be used.

The fundamental doctrine of the State Constitution is that railways are highways, and that, considered alone in that character, they belong to the public, subject to the control and regulation of the State; and adopting the language of the Supreme Court, employed in some of the cases in which that tribunal has sustained subscriptions made by public bodies in aid of the construction of railroads, they are *improved highways*, and the corporations that, by the permission and under the authority of the State, invested their means in making the *improvements*, acquired fixed, exclusive and vested property interests in the highway as improved, which the State has no constitutional power to disturb or displace, except in the exercise of the right and power of eminent domain, and upon making just compensation. But, it is true, as before stated, that the corporations that constructed and improved these highways, in addition to the powers conferred upon them to construct and maintain their roads, were authorized to employ upon them the most improved methods of transportation, and to engage in and carry on the business of common carriers of passengers and freights; and under the Constitution, their right to carry on that business cannot be taken from them by legislative action, nor by the exercise of the right or power of eminent domain, for after others have acquired the right to engage in business as carriers on the lines of their railways, there remains to the corporations but the right of participation in a common right which cannot be taken by the State in the exercise of any of its powers.

It will be observed that the theory of the Constitution thus presented concedes to the owners of railroads the right to compensation for the use of their roads, to the full extent that its use may be required or taken, and it will be easy for the General Assembly to prescribe rules under which carriers will be authorized to place upon any of the railroads of the State a definite number of engines and carriages to make stated trips from and to certain points, to move at an established rate of speed, to use the appurtenances of the road, and the fixed facilities provided by the corporation, or the right to provide facilities at different and convenient points along the line, all to be governed by such equal and proper regulations as may be prescribed by the corporation. But the exclusive right of railroad corporations to carry on the busi-

ness of common carriers on their lines is not supported by any just view of the law. They may, notwithstanding the fact that other carriers engage in business on their lines continue to prosecute the same business, but upon the highway of commerce in which they are interested as owners, they, while employed in the office and duty of carriers, have no superior rights to others.

In the conclusion of this view of this important subject it is due to myself that I should say, that the interests of the country demand that the power claimed by private persons and corporations to control all the great lines of intercourse between the remotest points on the continent, and the great centres of commerce and trade, cannot be longer endured.

In the infancy of the system, when railroads were merely subordinates to the natural lines of transportation, and their only competitors for business were the wagons of the pioneers, rights and powers were conceded to the corporations that controlled them, that are utterly inconsistent with the relations they now bear to the commerce of the country. They have superseded the rivers and the lakes, and, like them, must be made free, subject to no other burdens than such as are necessary to compensate those that own them; and no system of regulations which concedes the unfounded claim of railroad corporations, that are also engaged in business as common carriers, to the exclusive use of their lines for their own business, will or can be effectual to prevent the abuses, unjust discriminations and extortions under which the people have suffered so much, and of which they so justly complain.

PENAL AND REFORMATORY INSTITUTIONS.

THE PENITENTIARY.

At an early day the report of the Penitentiary Commissioners will be laid before the General Assembly, and I have the satisfaction of informing the representatives of the people that what was expected when the law now in force for the government of the Penitentiary was passed is realized, that the institution is now, and has been for some months past, practically self-sustaining.

On the 17th day of April, 1871, the General Assembly, embarrassed by the unexpected and unfortunate controversy in relation to the proposed relocation of the seat of government, suspended its session until the fifteenth of November following, and left the Penitentiary management without the means of providing employment or support for the convicts, and largely indebted and without credit, so that in fact there were no means of carrying on the institution. I was compelled to convene the General Assembly, and to again urge such changes in the law for the government of the Penitentiary as experience had shown to be necessary, and to ask an appropriation from the treasury for the sup-

port of the institution, if such a law could not be passed. I accordingly issued my proclamation convening the General Assembly at Springfield on the 24th day of May, 1871.

I was, when I issued the proclamation convening the Legislature, fully aware of the certainty that my motives would be misunderstood and unjustly censured, especially as I was compelled to say that I regarded the prosecution of the work upon the new State house as important not only to the general interests of the State, but as a means of providing immediate and remunerative employment for the convicts in the Penitentiary. In my message communicated to the General Assembly at its meeting on the 24th of May, 1871, I frankly stated my views in relation to the subject of appropriations for the prosecution of the work on the State house, and at the same time I said that "It has been my earnest desire since the commencement of my official connection with the government of the State, to see the Penitentiary so conducted as to accomplish the reformation of criminals, and at the same time be as little burdensome as possible to the people of the State, and notwithstanding the unsatisfactory results of past operations, I still believe that with proper legislation and judicious management it may be made eminently useful as a penal and reformatory agency, and at the same time substantially self-sustaining;" and at the same time I felt it to be my duty to add, "the only practicable system for the successful management of the Penitentiary, in my judgment, is that which combines the retention of complete control of the discipline and government of the convicts by the State, with the lease of their labor to persons engaged in special pursuits, etc.," and the General Assembly, soon after its meeting, passed a well considered act which embodies and gives effect to this principle, and executed as the law has been by the Commissioners, whose names appear to the report, all that was then predicted has been fully accomplished.

I feel it to be my duty to express my obligations to the Commissioners for the intelligence and fidelity with which they have discharged their duties, and I have no doubt the Warden and his subordinates, of whose services the Commissioners speak so highly, fully merit their commendations.

But notwithstanding the success of the efforts of the Legislature and the officers of the Penitentiary to improve its discipline, and to relieve the treasury from the burden of its support, I can but consider what has been done as but mere preparation for the commencement of real prison reform.

I do not propose any change in the principle or the general structure of the law now in force regulating the management of the Penitentiary. Under its provisions the labor of the convicts may be made to pay the expenses of the Penitentiary, and under judicious management and

favorable conditions of the general business of the country, possibly produce a surplus of greater or less amount, which ought to be employed for the benefit of the unfortunate persons by whose labor it is produced.

Nor do I think it possible to specifically direct the application of any surplus earnings so as to best promote the interests of the convicts. I therefore recommend that authority be given to the Commissioners to appropriate whatever may remain of the earnings of the Penitentiary, after the payment of all its expenses, to the improvement of the condition of the convicts, to making temporary provision for the support of the more helpless and destitute, after their discharge, until they can find employment, or to aid them in doing so. It is impossible for persons unfamiliar with the actual state of the case, to imagine the utter helplessness of many convicts when discharged from the Penitentiary. Committed to the institution when comparatively young, and while there cut off from all intercourse with their fellow men, they come forth ignorant of all the methods of obtaining honest support, they are outcasts who feel that they would not be benefited by making their actual situation known even to the benevolent, and they are therefore almost inevitably driven to seek the society and the aid of those whose character and habits of life are such as will afford no support to any intention the convict may have formed to pursue better courses. No reformatory system can be considered to be complete without some provision for the temporary shelter and support of persons of this class, nor without affording them aid in finding employment.

THE REFORM SCHOOL.

One of the institutions maintained by the State, and that from its objects and organization may, without great impropriety, be classed with its charities, is the Reform School at Pontiac.

This institution, though yet in its infancy, will, if it is so managed as to maintain public confidence hereafter, exercise an important and salutary influence in the improvement and reformation of a class whose condition has always excited the deepest interest.

Juvenile offenders, whose crimes are most frequently the result of the incapacity or the negligence of parents or guardians, or of neglected orphanage, or as experience has demonstrated with respect to many of that class, of talent intellectual or moral incapacity or disease, while they attract and enlist the sympathies of the philanthropic, furnish the most encouraging field for the employment of reformatory agencies, and it is to be hoped that as the State advances in wealth and culture a greater degree of attention will be given not only to the classes intended to be provided for and benefitted by the Reform School, but to neglected childhood wherever it may be found in the State.

It has been found extremely difficult in practice for the courts to harmonize some of the provisions of the law which provides for the commit-

ment of persons to the Reform School, and the general laws that provide for the punishment of offenders by confinement in the penitentiary, with the obvious demands of criminal justice. As an illustration of the difficulty adverted to, it will be observed, by reference to the provisions of the act of 1867, in relation to the Reform School, that all courts of competent jurisdiction are authorized to exercise their discretion in sending juvenile offenders to the county jails in accordance with the laws, or in sending them to the Reform School, provided that no person shall be sent to the Reform School for a term that will detain him beyond the time when he shall arrive at the age of eighteen years. The practical effect of this provision is that a class of persons that are under the age of eighteen years, but have nearly attained that age, are deprived of the benefit of the institution. If they are within a few months of that age, a sentence to detention in the Reform School, until they attain the age of eighteen years, is but for a nominal term, which subjects the State to the expense of conveying the offender to the institution to remain for a time too short to be productive of benefit, while a sentence to confinement in the county jail produces all the mischiefs intended to be avoided by the establishment of the Reform School. It is suggested that it would be a judicious method of removing the difficulty to amend the law so as to authorize the courts to sentence juvenile offenders to the Reform School for a term to extend until they arrive at the age of twenty-one years.

INEBRIATE HOSPITAL.

Recent investigations have led the most intelligent thinkers to the conclusion that drunkenness is a form of disease that admits of treatment and cure. This is not the proper occasion to discuss nor present at length any of the theories that have been lately advanced in relation to this form of misfortune, but enough is known to inspire a measure of confidence in the possibility of curing drunkenness by the use of the proper means, and no one familiar with the subject will hesitate to confess that, from its extensive prevalence and the mischiefs and dangers it is constantly producing, all efforts should be made to ascertain, by experiment, whether it does admit of permanent cure; nor would the failure of any experiment that might be made by the State relieve the subject from embarrassment, for there will still remain in the community a large and dangerous class, to whom may be traced the commission of a large proportion of the crimes that afflict society and disturb social order, and the time has come when it is a reproach to the State that no measures can be devised which will bring relief. I am aware that some still urge the total prohibition of the use of the liquors that produce intoxication, as the proper remedy for the evil of drunkenness; but I have never observed any satisfactory evidence of a real intention on the part

of the people to enforce measures of prohibition, nor do I believe the total prohibition of the use of intoxicating agencies possible. But if I am mistaken in this opinion, and the time shall hereafter arrive when the men who believe the total prohibition of the use of intoxicating liquors judicious or possible, will come to consider that object of enough importance to induce them to prefer its success to that of political parties, and vote according to their convictions, and succeed in giving effect to their views, it is not so near at hand that the General Assembly should, on account of its approach, delay to make provision to relieve society from the almost unendurable evils that drunkenness now produce.

Nor would it, in my judgment, greatly affect the duty of the General Assembly to make provision to protect society against the form of danger now under consideration, to express a concurrence with those who believe that intoxication is only a crime that merits punishment—and that is the light in which it is regarded under existing laws. As a crime none of the modes of punishment heretofore employed have been found sufficient to suppress it. As a social vice it is scarcely reproved; if, from the character or station of the guilty party, it is thought proper to punish the offender, it is done by the infliction and collection of fines, that only impoverish without reforming him, and the only effect of the frequent imposition of fines is to deprive him of his property and reduce his family to want.

To me the theories upon which the laws respecting drunkenness depend are as manifestly absurd as they are oppressive and unjust. If it is a mere habit, that inflicts no public injury, all the laws that treat it as a crime are unjust, and should be at once repealed. If it is a crime it should be punished whenever committed. The laws should be enforced impartially and without respect to the social standing of the offender, and if a crime, persons who become intoxicated ought to be subjected to the laws that authorize dangerous persons to be restrained.

If drunkenness is a disease or habit that produces physical alterations that assume the form of diseased mental or nervous action, so that the subject becomes an object of danger to individuals or to the public peace, punishments that assume his legal responsibility are unwarranted and unjust, though his confinement may be justified upon grounds that are consistent with proper regard for the safety of the public and with the real interests of the unhappy victim.

Accepting what I conceive to be the most enlightened as well as the most humane view of the subject, I recommend to the General Assembly the establishment of an asylum or retreat for inebriates, to which all persons conscious of their unhappy condition may voluntarily resort upon consenting to such conditions and regulations for the government of their conduct as may be prescribed under the authority of law, and to which all habitual drunkards and persons who become dangerous when intoxicated may be committed, and, if need be, confined until cured.

The safety of individuals and of society is involved in the success of the measure proposed.

Under the criminal laws, all persons who break the peace or threaten to injure the person or property of another may be committed to jail or required to give bail. Intoxicated persons, from their condition, menace the safety of others, and if intoxication is a crime, as I think it is improperly supposed to be, society has a right to demand that preventive means be employed for its protection; if a disease, as I suppose it to be, the victim of social errors and vicious legislation ought to be provided with a retreat, and if possible a cure.

REVISION OF THE LAWS.

In 1869 a commission was appointed, in pursuance of an act providing therefor, to revise the general statutes of the State. At the subsequent session, a portion of the work was reported to the General Assembly and adopted. So far as the work of the revisors has come to my attention, in view of the difficulties they had to encounter, it has been well performed and shows that it has been entrusted to faithful and skillful hands. There having been no revision or codification of the general statutes since 1845, a period of nearly thirty years, and there having occurred, during the time, two several revisions of the Constitution of the State, it requires no extensive argument to show the necessity of completing this work of revision at an early day, that the law may be supplied to public officers and citizens at reasonable cost, and in proper and intelligible form.

If obedience to the law is expected, it seems as if ample provision should be made by the law making power to bring its provisions to the knowledge of those for whose government it is intended, and that, too in methodical and intelligible form, addressed to the common understanding. It is therefore to be hoped that this subject may receive at your hands that early and favorable attention which the public interest would seem to demand.

THE JUDICIARY.

It will be the duty of the General Assembly at its present session to divide the State anew into Judicial Circuits, as directed by the 13th section of the 6th article of the Constitution. The duty to be performed is one of much delicacy, and will no doubt be accomplished in the just and impartial spirit contemplated by the Constitution.

REPORTS OF STATE OFFICERS.

The reports of the Secretary of State, the Auditor, the Treasurer and Superintendent of Public Instruction will be laid before the General Assembly. I cannot permit myself to separate from these officers without testifying to the faithfulness with which all of them have discharged their duties to the State.

These reports present a clear and full statement of the condition of the business in their respective offices, and contain much information of great value to the people of the State.

The State of Illinois is now substantially free from debt, and the time is not distant when it will occupy the proud position amongst the States of having discharged all its obligations, and of imposing no burdens upon its citizens except such as may be required to carry on its government.

STATE CHARITABLE INSTITUTIONS.

The excellent and exhaustive report of the Board of State Charities contains information of the financial condition and wants of the various charitable institutions, and at the same time affords evidence of the wisdom of the policy that suggested the creation of that Board.

No circumstance connected with my official life affords me more pleasure than to bear witness to the earnest devotion of the members of the Board to their interesting and sometimes perplexing duties. They receive no salaries for their services, though nothing, in my judgment, would be more proper than that they should be allowed hereafter such compensation as will at least partially indemnify them for the loss of their time.

The report of the trustees and officers of the Hospital for the Insane, the institutions for the Blind, and the Deaf and Dumb, show that they are well managed, and no doubt appropriations will be made adequate to their wants.

It seems to be my especial duty to ask the favorable consideration of the Legislature to the condition and wants of the institution for the care of the Feeble-minded. Until lately, this institution was regarded as an experiment; it is now an established success, and is effecting an amount of good for the unfortunates under its care that fully justifies its increased demands upon the treasury. It appears to me that a competent board (and I know of none more competent than the present trustees of the institution, and the superintendent,) should be appointed to select a location that affords all the requisite facilities, and erect thereon a building suitable to its wants. Such buildings as should be provided need not be expensive, but should be adequate to the wants of the class intended to be aided.

INTERNATIONAL PRISON REFORM CONGRESS.

I also have the honor to submit to the General Assembly the able report of Rev. Nehemiah Pierce, one of the delegates appointed by me, under the authority of a joint resolution adopted at the last session of the General Assembly, to attend the meeting of the International Prison Reform Congress which assembled at Middle Temple Hall, in the city of London, in July last.

Mr. Pierce attended the deliberations of the congress, and the report made by him embodies much highly valuable information upon the interesting subjects that claimed the attention of the congress.

The services rendered by Mr. Pierce in attending the congress were entirely gratuitous, and I submit that it would be worthy of the liberality of the General Assembly to appropriate a sufficient sum to repay him for the expenses incurred in preparing his most valuable report.

The reports relating to the Industrial University and the Normal institutions will show the condition of those institutions, and I commend them to the favorable consideration of the General Assembly.

NEW STATE HOUSE.

The commissioners for the erection of the new State House, as will appear by their report, have made considerable progress in the work, and have discharged their duties with fidelity to the State. I cannot doubt but that appropriations will be made and the building pushed forward to completion.

There are other subjects that will demand the attention of the General Assembly, and that might with propriety be mentioned, but as the distinguished citizen who will succeed me has large experience in the affairs of the State, I cannot doubt but that they have already secured his attention, and that his views and recommendations will be submitted to you at an early day.

CONCLUSION.

I am not willing to close this communication and my official connection with the government without expressing something of my gratitude to the people for the honor they conferred upon me with the chief magistracy of the State. No one is more conscious than I am, that in the necessarily active share I have taken in the varied affairs of this great commonwealth, I have, in the judgment of some, committed mistakes; but I have, in all my important official acts, been governed by my own convictions of duty, only anxious that the free people of the State, to whose candid judgment alone I am responsible, should fully understand my conduct and its reasons and motives, and then decide to approve or relieve themselves from the consequences of what they may regard as my mistakes, by selecting a citizen for my successor who will avoid any error they may think I have committed.

During my administration of the government of the State I have steadily acted upon political principles that I have always cherished as being essential to the well being of my countrymen. I have never faltered in the assertion of the rights of all men to liberty. Habitually distrustful of power, I have insisted upon subjecting all claims of a

right to govern the people or to exercise any authority over them to the test of the Constitution, and I have never willingly submitted to any pretension of any person claiming power to act under the authority of the government of the United States, unless the power claimed was found to have been expressly granted or was necessarily implied in some grant of power contained in the Federal Constitution. And when the authority sought to be exercised has been claimed under a State, I have as earnestly sought to know that it was not comprehended within some power the people of the State have by their constitution reserved to themselves or forbidden to be exercised by others. I have at all times regarded it as amongst my solemn duties to obey the Constitution of the United States, and to aid in defending the government created by that instrument, in the exercise of all its just powers, nor have I felt that my duty to support the Constitution of the United States originated in my official oath to do so.

My duties to the government of the United States began with my birth, and have never been forgotten nor neglected, and my unalterable purpose to discharge those duties has the support of my judgment and my affections, and I have felt under the most solemn of earthly obligations to obey and defend and support the Constitution and laws of the State of Illinois, and to enforce the laws of the State against all who might offend against them. I need not say that the duty of obeying and defending the laws of the State has the support of my most earnest convictions—for the preservation of the just authority of the States is essential to the perpetuity and usefulness of the government of the United States, and the maintenance of both is essential to that which is more precious than either—the liberties of the people.

The Constitution of the United States and that of the State of Illinois, alike admit of amendment and alteration; that of the United States in one of its modes, by the action of three-fourths of the States, and the Constitution of the State of Illinois by the consent of its people; but neither the one nor the other, nor the powers created, or the restrictions imposed by either, can be enlarged, expanded or restricted or limited, by mere construction. I do not believe that the civil war or its results altered or changed the Constitution of the United States, or that the war or its results enlarged or expanded the powers of the federal government, or contracted or diminished the powers of the States; nor did the war, either in its origin or history or its results, prove that according to the just theory of the government, the Federal and State systems are rivals for power, or that their powers, when rightly understood and wisely exercised, can be brought into collision. On the contrary, they are mere agencies and trustees of the people, who have assigned to the federal system certain well-defined duties, reserving to themselves in express terms all other powers of government; and then, that the es-

sential rights of the citizens might be made secure, the people of the States have, in their Constitutions, declared that there are powers that no authority shall exercise, and that they possess rights that no government shall invade. I have at all times felt the deepest solicitude for the maintenance of the rights reserved to the States and the people for the reasons, alone, that they are the rights that are in the greatest danger of invasion; and while I have been watchful to maintain the authority of the States and the rights of the people when threatened from any quarter, my apprehensions have been most alive to dangers from the abuse of the powers of the federal government and from the influences of powerful and corrupt combinations that have their centre at the seat of the federal government, and from that centre extend their baneful influences over the whole country.

It is a fact, attested by history, that all the great dangers and convulsions that have threatened the overthrow of the Republic, and the subversion of public liberty, have had their sources there. It was at Washington that dis-union was conceived, and all the measures that made rebellion possible were organized in the Congress of the United States. It was from their seats that members of the two Houses of Congress from the Southern States aroused the fears and stimulated the hates of their constituents, until they became forgetful of the separate independent existence of the States, and the whole section was organized into an "United South."

Rebellion was not possible until all the Southern States were stripped of all independent authority, and ceased to be centres of patriotic resistance; and it is from Washington that influences now proceed that threaten the overthrow of the liberties of the people; and to these influences I have felt it to be my duty to interpose a steady resistance. I do not, as may be inferred, attribute unpatriotic purposes to any department of the government of the United States, but I do declare my belief that as the result of the new and dangerous views entertained by many in authority under that government, from vicious and dangerous alterations which our political system has undergone from the ambition of some, the corruptions of others, and by the combinations of all these causes, the harmony of our systems and the authority of the laws and the purity of the government, and the liberties of the people, are in danger.

My belief that these causes and dangers exist, has the support of many facts. The Congress of the United States is assuming to itself the entire domain of legislation, and to draw under its control every interest of the country, and to enlarge and extend the jurisdiction of the courts of the United States, and to increase the mere discretionary powers of the President. There are few subjects that are not now claimed to be within the control of the government of the United States, and with

the support of the doctrine that the authority of the Federal government over subjects within the scope of its powers, is exclusive of that of the States, the day is not far distant when the right of the States to interfere in the control of the subjects of education, elections, the management of railways and telegraphs, and others of like importance, and their power to enforce justice in their courts, will be denied or greatly abridged. But the whole force of this influence is not confined to mere direct assertion of the authority of Congress, but it extends to the support of the pretensions of persons who hold their offices at the will of a distant authority, to interfere with the people in the exercise of their most important rights. I need not refer to all the facts that exist to support this statement. For nearly two years the rivalries of political parties have disturbed the peace of the State of Louisiana. A faction, largely composed of and headed by federal officeholders, has notoriously employed the troops of the United States, and vessels connected with its revenue service, and the patronage of the custom house, the post office, and the federal courts, to defeat and counteract the efforts of their adversaries; and more recently a judge of the United States, by an act of daring usurpation, has assumed the championship of the interests of one of the rival organizations that are contending for power in that unhappy State, and has, by a judicial order, without parallel in our history, on bills filed by persons claiming offices under the constitution and laws of the State, disposed of and settled the great political questions that grow out of the disputed results of a State election, and he has in fact appointed the future Governor, and the persons who are to compose the Legislature of the State; and after having done so, then, by the use of the army of the United States, took possession of the public buildings and other property of the State; and none of these lawless usurpations and invasions of the laws and liberties of that State have been punished or rebuked. Acts like these may be perpetrated in the State of Illinois, and the consciousness of that fact has impressed upon me the necessity of resisting their influence, and demanding of all obedience to the constitution and laws. It cannot be that the people of the State of Illinois are weary of the right to regulate and order their own domestic institutions in their own way, or that they so doubt their own respect for the government of the United States, that they must enlarge its powers and subject themselves to the despotic agencies that are employed in many of the States of the Union. Illinois has always discharged all its duties to the common Union, and its people have everywhere shown themselves capable of comprehending and vindicating the central principle of American republicanism, "State Sovereignty, National Union."

JOHN M. PALMER.